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UNITED STATES DISTRICT COURT WESTERN DISTRICT
OF WASHINGTON AT SEATTLE

BEACON PLUMBING & MECHANICAL, INC.,

Plaintiff,

v.

SPOSARI INC. d/b/a MR. ROOTER PLUMBING
SERVICES, MR. ROOTER LLC, THE DWYER
GROUP, INC., THE DWYER GROUP LLC, and
JOHN DOES 1-100,

Defendants.

No. 2:15-CV-01613

COMPLAINT FOR FEDERAL AND
STATE TRADEMARK DILUTION;
STATE TRADEMARK
INFRINGEMENT; FEDERAL FALSE
ADVERTISING; VIOLATION OF
FEDERAL
ANTICYBERSQUATTING
CONSUMER PROTECTION ACT;
VIOLATION OF WASHINGTON
STATE CONSUMER PROTECTION
ACT; TORTIOUS INTERFERENCE
WITH BUSINESS EXPECTANCY;
AND COMMON LAW
TRADEMARK INFRINGEMENT
AND UNFAIR COMPETITION

JURY TRIAL DEMANDED

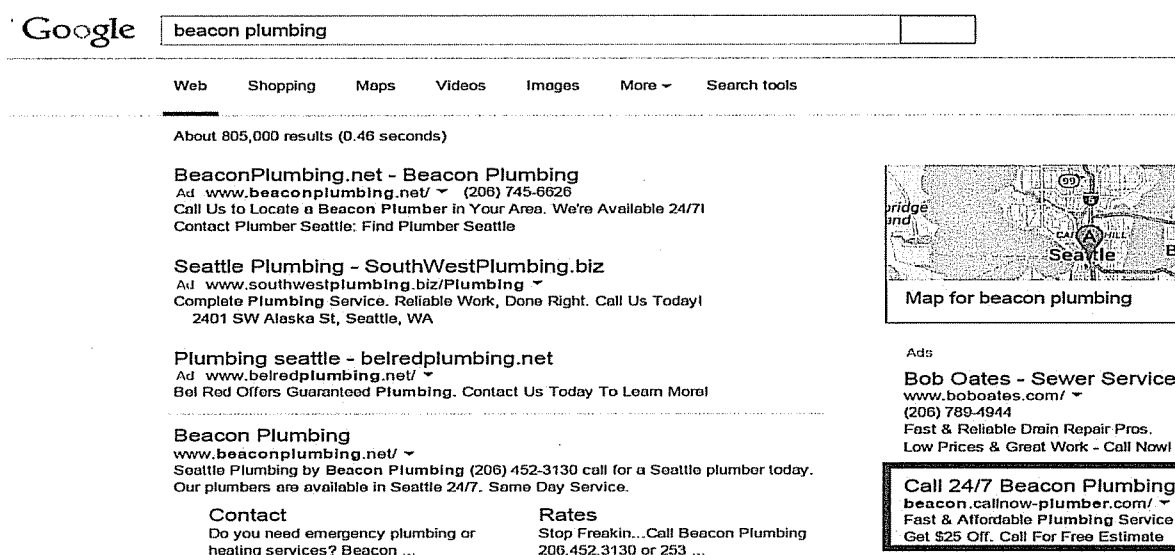
Plaintiff Beacon Plumbing & Mechanical, Inc. ("Beacon" or "Plaintiff"), by its counsel, state the following for their Complaint against Sposari Inc. d/b/a/ Mr. Rooter Plumbing Services ("Mr. Rooter of Seattle"), Mr. Rooter, LLC ("Mr. Rooter"), the Dwyer Group Inc. ("Dwyer Inc."), the Dwyer Group LLC ("Dwyer LLC"), and John Does 1-100 ("Does") (collectively, "Defendants"):

1. This is an action at law and in equity for trademark dilution and infringement, false advertising, cybersquatting, deceptive trade practices, tortious interference of business

expectancy, and unfair competition arising under the Trademark Act of 1946, 15 U.S.C. §§ 1051 *et seq.* (2004) (“Lanham Act”), Washington State Chapter 19.77 RCW (“Washington Trademark Act”), the Washington Consumer Protection Act (“CPA”), and the common law.

2. Beacon is the leading and most-recognized provider of plumbing services in the greater Puget Sound area. Beacon has invested enormous amounts of money and resources into television, radio, and print advertisements for its services, including paying substantial sums to Marshawn Lynch, the running back for the Seattle Seahawks, to appear in its advertisements. Beacon has trademark registered with Washington’s Secretary of State (“Mark”).

3. Seeking to profit from Beacon’s goodwill and reputation, Defendants commenced a Google AdWords campaign. Under this campaign, each time a Google user searches for the term “Beacon Plumbing” or any variation thereof (*e.g.*, “Beacon Plumbing Seattle” or “Beacon Plumbing Tacoma”), a text advertisement (“Advertisement”) appears on the search results page. The Advertisement displayed the phrase “Call 24/7 Beacon Plumbing” in large font. Underneath this phrase, the Advertisement displayed “beacon.callnow-plumber.com.” The screenshot below displays the Advertisement:



omissions within this state causing injury, they have engaged in acts or omissions outside of this state causing injury within this state, they have entered contracts with residents of this state, and/or they have otherwise made or established contacts within this state sufficient to permit the exercise of personal jurisdiction.

10. This District is a proper venue pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Beacon's claims occurred in this District.

PARTIES

11. Plaintiff Beacon Plumbing & Mechanical, Inc. ("Beacon") is a corporation organized and existing under the laws of the State of Washington, having its principal place of business at 515 7th Ave S., Seattle, Washington 98104.

12. On information and belief, Defendant Sposari Inc. d/b/a Mr. Rooter Plumbing Services ("Mr. Rooter of Seattle") is a Washington corporation with its principal place of business at 2000 S. 116th St., Seattle, Washington 98168. Mr. Rooter of Seattle is a competitor of Beacon.

13. On information and belief, Mr. Rooter, LLC ("Mr. Rooter") is a Texas corporation with its principal place of business at 1020 N. University Parks Dr., Waco, Texas, 76707. On information and belief, Mr. Rooter of Seattle is a franchisee of Mr. Rooter.

14. On information and belief, the Dwyer Group Inc. ("Dwyer Inc.") is a Delaware corporation with its principal place of business at 1020 N. University Parks Dr., Waco, Texas 76707. On information and belief, Mr. Rooter is wholly owned by Dwyer Inc. and/or Dwyer Group LLC.

15. On information and belief, the Dwyer Group LLC ("Dwyer LLC") is a Delaware corporation with its principal place of business at 1020 N. University Parks Dr., Waco, Texas 76707. On information and belief, Mr. Rooter is wholly owned by Dwyer Inc. and/or Dwyer LLC.

16. On information and belief, John Does 1-100 ("Does") are individuals or organizations who are acting in concert with Mr. Rooter of Seattle, Mr. Rooter, Dwyer Inc.,

and/or Dwyer LLC, to engage in tortious and unlawful conduct. Plaintiff is unaware of the true names and capacities of the Does and therefore sues these defendants by such fictitious names. Beacon will amend this complaint to allege the true names and capacities of the Does when ascertained. Each of the fictitiously named defendants is responsible in some manner for the conduct alleged in this Complaint, and Beacon's damages are actually and proximately caused by the conduct of such defendants.

FACTS COMMON TO ALL CLAIMS

17. Beacon is a family-owned business that has been providing plumbing, heating, and mechanical services in the greater Puget Sound area since 1999. Beacon is an exceptionally well-recognized company in Seattle, Tacoma, Everett, Olympia, Kent, and neighboring areas. Beacon maintains a website at www.beaconplumbing.net.

18. Beacon has run television and radio advertising campaigns featuring Marshawn Lynch, the running back for the Seattle Seahawks. These advertising campaigns have generated national media coverage. *See* "Marshawn Lynch will go Beast Mode on your plumbing needs," available at <http://www.foxsports.com/nfl/laces-out/marshawn-lynch-will-go-beast-mode-on-your-plumbing-needs-121413>.

19. Beacon has also sponsored a hydroplane known as "Miss Beacon Plumbing" that has competed in the Albert Lee Cup race during Seattle's famous Seafair festival.

20. Beacon has invested substantial sums for advertising across all media, including television, radio, and print. Through its advertising and long-standing presence in the Puget Sound area, Beacon has generated tremendous goodwill and is one of the area's most recognizable businesses.

21. Beacon has a registered Mark.

22. Beacon's Mark includes the slogan "Stop Freakin' . . . Call Beacon" in bold, red text. The Mark also displays the word "Beacon" prominently in black capital letters.

23. Advertisements containing Beacon's Mark are featured on buses and billboards across the greater Puget Sound area, as well as in television and radio advertisements.

1 24. Beacon spends substantial amounts of money each year developing, advertising,
2 and promoting its services using its Mark. Beacon has extensively and continuously used and
3 promoted its Mark in connection with plumbing and other services. As a result, Beacon has
4 built up and now owns valuable goodwill in its registered Mark.

5 **DEFENDANTS' UNLAWFUL AND TORTIOUS ACTIVITIES**

6 25. Defendants commenced an advertising campaign through Google AdWords,
7 which allows companies to bid for certain keywords. When Google users search for these
8 keywords, the company's text advertisement will appear on the search result page.

9 26. Defendants bid on the "Beacon Plumbing" keyword. This is established by the
10 fact that the keyword searches "Beacon Plumbing", "Beacon Plumbing Seattle", and "Beacon
11 Plumbing Tacoma" all resulted in Defendants' Advertisement displayed on all three search
12 result pages.

13 27. Defendants created the content for their Advertisement. The Advertisement
14 includes the phrase "Call 24/7 Beacon Plumbing" in large font. Underneath this phrase is the
15 phrase "beacon.callnow-plumber.com." Both "Call 24/7 Beacon Plumbing" and
16 "beacon.callnow-plumber.com" are hyperlinks, which took users to the URL "callnow-
17 plumber.com/display1"

18 28. The "callnow-plumber.com/display1" URL is for a website that prominently
19 displays the "Mr. Rooter Plumbing" logo in the top-left corner. The telephone number
20 displayed on the website is for a call center for Mr. Rooter. As of the filing of this Complaint,
21 the "callnow-plumber.com/display1" URL continues to be active and the telephone number still
22 leads to the call center.

6/4/2015

Plumber - 888-230-1238



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A plumbing emergency is one of the most stressful and disruptive events a homeowner experiences. CallNow-Plumber.com offers a 24-hour solution for your residential and commercial properties.

If you need emergency plumbing services, please contact one of our expert technicians. If you are having an issue and want to determine if you need a hand from one of our local expert technician, simply give us a call.

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- Water Softeners
- Sewer Line
- Laundry Centers
- Gas Meters
- Bath Sinks
- Bathtubs & Showers
- Water Heaters
- Drain Pipes
- Garbage Disposals
- Gas Vents
- Backflow Prevention

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- Septic Tanks
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1/1

COMPLAINT - 7

No.

FLOYD, PFLUEGER & RINGER P.S.

200 WEST THOMAS STREET, SUITE 500
SEATTLE, WA 98119
TEL 206 441-4455
FAX 206 441-8484

29. Plaintiff learned about Defendants' Advertisement in early June 2015 after a customer called and reported it. Plaintiff experienced a substantial decrease in customer calls and sales during the period of May and June 2015, which was actually and proximately caused by Defendants' Advertisement.

30. After the Advertisement was discovered, general counsel for Dwyer Inc. and Dwyer Group LLC was contacted. Shortly thereafter, the Advertisement was apparently taken down, demonstrating Defendants' control over when and how the Advertisement was displayed.

31. The unlawfulness of Defendants' Advertisement is blatant. While many trademark claims are based on a defendant's use of a similar or confusing Mark, Defendants in this case simply stole the name "Beacon" and used it in their Advertisement.

32. Moreover, Defendants flagrantly used Plaintiff's Mark in a manner that is intentionally deceptive and cannot be blamed on a mistake. Defendants provided the content for their Advertisement and purposely included the phrases "Call 24/7 Beacon Plumbing" and "beacon.callnow-plumber.com." These phrases were designed specifically to confuse and deceive consumers into believing that they were accessing Plaintiff's services.

32. Indeed, "beacon.callnow-plumber.com" URL contains a third-level domain that was specifically created by Defendants to enhance the deceptiveness of their Advertisement.

33. Defendants conduct violates multiple federal and state laws and entitles Plaintiff to substantial relief in the form of actual and compensatory damages, attorney fees and costs, and civil penalties and statutory damages.

FIRST CLAIM FOR RELIEF
(Federal Trademark Dilution)

34. Plaintiff repeats and realleges each and every allegation above as if fully set forth herein.

35. Defendants have engaged and are engaging in a Google AdWords campaign that displays a specific advertisement whenever a Google user searches for the term "Beacon Plumbing" or any variation thereof (e.g., "Beacon Plumbing Seattle.") This advertisement

contains the phrases "Call 24/7 Beacon Plumbing" and "beacon.callnow-plumber.com." Clicking on the advertisement, however, leads users to Defendants' website.

36. Through their Google AdWords campaign, Defendants deliberately chose "Beacon Plumbing" as a term that would trigger the display of their advertisement. Defendants also deliberately provided the content of the advertisement (*i.e.*, "Call 24/7 Beacon Plumbing" and "beacon.callnow-plumbing.com"). Further, Defendants created the "beacon.callnow-plumber.com" URL by using "beacon" as the third-level domain.

37. Defendants' advertisement constitutes use in interstate commerce of Plaintiff's Mark after the Mark became famous. Defendants are using Plaintiff's Mark in a manner that causes dilution by blurring because Plaintiff's Mark is being used to identify Defendants' services. As a result, the ability of Plaintiff's Mark to serve as a unique identifier of Plaintiff's services has been and is being diminished.

38. Defendants also are using Plaintiff's Mark in a manner that causes dilution by tarnishment because Plaintiff's Mark is being improperly associated with inferior services offered by Defendants.

39. Through the Advertisement, Defendants have injured and will continue to injure Plaintiff's business reputation. Defendants' Advertisement also proximately caused lost sales and resulted in unjust profits for Defendants.

40. Defendants' use of Plaintiff's Mark violates 15 U.S.C. § 1125(c)(1). Plaintiff is entitled to injunctive relief against Defendants to further prohibit any use of Plaintiff's Mark. The continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Plaintiff has no remedy at law. Plaintiff will continue to suffer irreparable harm unless this Court enjoins Defendants' conduct. Plaintiff is entitled to such relief regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

41. Pursuant to 15 U.S.C. § 1125(c)(5), Plaintiff is entitled to the remedies set forth in 15 U.S.C. §§ 1117(a), including Defendants' profits, damages sustained by Plaintiff, and

attorney fees and costs due to the egregious conduct of Defendants and the exceptional nature of this case. Defendants used Plaintiffs' Mark in commerce in an unlawful manner after October 6, 2006, and Defendants willfully intended to trade on the recognition of Plaintiff's Mark and harm the reputation of Plaintiff's Mark.

42. Plaintiff's recovery under 15 U.S.C. §§ 1117(a) is not limited to actual damages, and may be adjusted upward to justly compensate Plaintiff pursuant to the egregious circumstances of this case.

SECOND CLAIM FOR RELIEF
(State Trademark Dilution)

43. Plaintiff repeats and realleges each and every allegation above as if fully set forth herein.

44. Defendants' advertisement constitutes commercial use of Plaintiff's Mark in Washington after the Mark became famous. Defendants are using Plaintiff's Mark in a manner that dilutes the distinctive quality of Plaintiff's Mark.

45. Defendants' use of Plaintiffs' Mark violates RCW 19.77.160. As a result of Defendants' unlawful conduct, Plaintiff has been injured through, among other things, lost sales and damage to goodwill and reputation.

46. Plaintiff is entitled to injunctive relief against Defendants to further prohibit any use of Plaintiff's Mark.

47. Defendants willfully and in bad faith intended to trade on Plaintiff's reputation and cause dilution of Plaintiff's Mark. Accordingly, Plaintiff is entitled to recover all profits derived by Defendants and all damages suffered by Plaintiff, as well as attorney fees and costs.

THIRD CLAIM FOR RELIEF
(State Trademark Infringement)

48. Plaintiff repeats and realleges each and every allegation above as if fully set forth herein.

49. Defendants are using Plaintiff's Mark in connection with the sale, offering for

1 sale, and advertising of Defendants' services in a manner that causes confusion, mistake, and
 2 deception as to the source and origin of Defendants' services in violation of RCW 19.77.140.

3 50. As a result of Defendants' unlawful conduct, Plaintiff has been injured through,
 4 among other things, lost sales and damage to goodwill and reputation.

5 51. Defendants are entitled to injunctive relief against Defendants to further prohibit
 6 any use of Plaintiff's Mark. Additionally, Defendants' bad faith conduct entitles Plaintiff to
 7 recover all profits derived by Defendants and all damages suffered by Plaintiff, as well as
 8 attorney fees and costs.

9 **FOURTH CLAIM FOR RELIEF**
 10 **(Federal False Advertising)**

11 52. Plaintiff repeats and realleges each and every allegation above as if fully set forth
 12 herein.

13 53. Defendants' advertisement repeatedly uses the name "Beacon" (*e.g.*, "Call 24/7
 14 Beacon Plumbing" and "beacon.callnow-plumbing.com"). This constitutes use in interstate
 15 commerce of a name in connection with Defendants' services that misrepresents the nature and
 16 geographic origin of Defendants' services in violation of 15 U.S.C. § 1125(a)(1).

17 54. Defendants deliberately included the name "Beacon" throughout their
 18 advertisement with the intent to deceive. This gives rise to a presumption of actual consumer
 19 deception and reliance.

20 55. As a result of Defendants' unlawful conduct, Plaintiff has been injured through,
 21 among other things, lost sales and damage to goodwill and reputation. Defendants unauthorized
 22 and tortious conduct has also deprived and will continue to deprive Plaintiff of the ability to
 23 control the consumer perception of its services offered under Plaintiff's Mark, placing the
 24 valuable reputation and goodwill of Plaintiff in the hands of Defendants.

25 56. Plaintiff is entitled to the remedies set forth in 15 U.S.C. §§ 1117(a), including
 26 Defendants' profits, damages sustained by Plaintiff, and attorney fees and costs due to the
 27 egregious conduct of Defendants and the exceptional nature of this case.

57. Plaintiff's recovery under 15 U.S.C. §§ 1117(a) is not limited to actual damages, and may be adjusted upward to justly compensate Plaintiff pursuant to the circumstances of this case.

FIFTH CLAIM FOR RELIEF
(Anticybersquatting Consumer Protection Act)

58. Plaintiff repeats and realleges each and every allegation above as if fully set forth herein.

59. Defendants are using a domain name ("beacon.callnow-plumbing.com") that is identical and confusingly similar to and dilutive of Plaintiff's Mark.

60. Defendants are acting in bad faith with intent to profit from Plaintiff's Mark, divert customers away from Plaintiff's online location, harm the goodwill represented by Plaintiff's Mark for commercial gain and to tarnish the Mark, and to create consumer confusion as to the source, sponsorship, affiliation, and endorsement of the site.

61. Defendants' unlawful conduct proximately caused injuries to Plaintiff including, among other things, lost sales and damage to goodwill and reputation.

62. Plaintiff reserves its right to elect, at any time before final judgment is rendered by this Court, to recover an award of statutory damages of not less than \$1,000 and not more than \$100,000.

SIXTH CLAIM FOR RELIEF
(Washington Consumer Protection Act)

63. Plaintiff repeats and realleges each and every allegation above as if fully set forth herein.

64. Defendants' advertisement constitutes a deceptive act in the conduct of commerce pursuant to RCW 19.86.020. Defendants' conduct has the capacity to deceive substantial portions of the public, as Defendants used Plaintiff's Mark in order to advertise its Defendants' own services and divert consumers away from Plaintiff.

65. Defendants' conduct is injurious to the public interest.

66. Defendants violation of RCW 19.86.020 is repeated and ongoing. Each time Defendants' advertisement was displayed constitutes a violation of RCW 19.86.020. Each time Defendants' advertisement was clicked on also constitutes a violation of RCW 19.86.020.

67. Plaintiff is entitled to an injunction to prevent Defendants from engaging in conduct in violation of the Washington Consumer Protection Act, as well as recovery for actual damages sustained as a result of Defendants' unlawful conduct and attorney fees and costs.

68. The circumstances warrant a trebling of actual damages pursuant to RCW 19.86.090.

69. Additionally, this Court should require Defendants to forfeit and pay a civil penalty of \$2,000 for each violation.

SEVENTH CLAIM FOR RELIEF
(Tortious Interference with Business Expectancy)

70. Plaintiff repeats and realleges each and every allegation above as if fully set forth herein.

71. As a direct and proximate result of the aforementioned activities, Defendants intentionally interfered with a valid business expectancy. Defendants are aware that Google users who searched for "Beacon Plumbing" would be likely to, if not certain to, click on the Advertisement because it contained several uses of the name "Beacon." Indeed, the Advertisement displayed a hyperlink ("beacon.callnow-plumber.com") that was designed to deceive users into believing it was a website operated by Plaintiff.

72. Defendants had knowledge that the Google users represented valid business expectancies, and Defendants intentionally interfered with those expectancies by diverting those users to Defendants' website. This interference was done with an improper purpose that resulted in lost sales for Plaintiff.

EIGHTH CLAIM FOR RELIEF
(Common Law Infringement and Unfair Competition)

73. Plaintiff repeats and realleges each and every allegation above as if fully set forth herein.

74. Defendants violated Washington common law by deliberately and willfully attempting to trade on Plaintiff's long-standing and hard-earned goodwill in its name and Mark and the reputation Plaintiff established in connection with its products and services, as well as to confuse consumers as to the origin and sponsorship of Defendants' services and to pass their services off as those of Plaintiff.

75. As a direct and proximate result of the aforementioned activities, Plaintiff has suffered substantial damages, as well as the continuing loss of the goodwill and reputation established by Plaintiff in its name and Mark.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. An injunction restraining and enjoining Defendants from engaging in any conduct to unlawfully dilute or infringe on Plaintiff's Mark, reputation, and services;

B. An injunction directing Defendants to immediately issue a notice, in a form and manner approved by the Court, to all individuals who contacted Defendants as a result of the Advertisement, advising them of the deceptive nature of the Advertisement;

C. That Defendants be awarded statutory, compensatory and consequential damages including, but not limited to, the loss of revenue and sales from customers or potential customers resulting from the Advertisement;

D. That Plaintiff forfeit and pay civil penalties pursuant to the Washington Consumer Protection Act;

E. That Plaintiff be awarded prejudgment interest and attorneys' fees and costs, as provided under applicable law; and

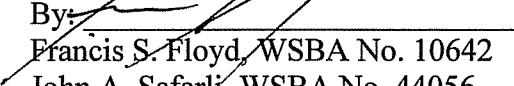
F. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY

Should this matter proceed to trial, Plaintiff demands that all issues of fact be determined by a jury.

DATED: October 20, 2015


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